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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.H. et al., Persons
Coming Under the Juvenile
Court Law.

B291753
(Los Angeles County
Super. Ct. No. DK03258)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

E.S. (Mother) appeals from the order terminating her parental rights over her three-year-old daughter K.H.¹ She contends her right to due process was violated by the juvenile court's denial of her request for a contested Welfare and Institutions Code² section 366.26 hearing to challenge whether K.H. was adoptable. Mother also contends the juvenile court's finding K.H. was likely to be adopted was not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Prior Dependency Petitions

On March 12, 2014 the juvenile court sustained a petition as to K.H.'s sister, R.H., alleging Mother had a history of drug abuse and used methamphetamine, amphetamine, and marijuana, which rendered her incapable of providing regular

¹ Mother filed a notice of appeal from the order terminating her parental rights over K.H. and her sister R.H. However, in her opening brief Mother only contests the findings and order as to K.H. Accordingly, Mother's appeal as to R.H. is dismissed as abandoned.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

care for R.H. Mother used drugs during her pregnancy with R.H., and both she and R.H. tested positive for marijuana at the time of the child's birth. In addition, Robert H. (Father) used amphetamine and methamphetamine, which rendered him incapable of providing regular care for R.H.

On August 10, 2015 the court sustained a second petition alleging Mother had two positive tests for marijuana while pregnant with K.H. Mother used marijuana and had a history of drug use, including methamphetamine and amphetamine.

Mother and Father fully complied with their case plans. On August 8, 2016 both children were returned to the parents' care and the juvenile court terminated jurisdiction.

B. *The Current Referral*

On May 30, 2017 the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging Mother emotionally abused her daughters—10-year-old Charlotte Z., three-year-old R.H., and two-year-old K.H. The caller reported Mother constantly yelled at the children and called them names. Mother told the responding police officer she was trying to give R.H. and K.H. a bath, but they were “out of control.”³ Mother told the police officer she was washing R.H.'s hair, but R.H. told the officer Mother was putting her head in the water. Mother appeared to be under the influence of methamphetamine, but she passed all the sobriety tests. The

³ Charlotte was not present when the police officers arrived at the home in response to the call. Charlotte was living with her maternal grandmother, who had been her legal guardian since she was four.

police officer did not arrest Mother, but was concerned about the children's safety.

On the same day a social worker met Mother at her home. Mother was uncooperative, and her answers were "short, and evasive." Mother told the social worker that R.H. was "defiant" and "evil." She denied trying to drown R.H. Mother admitted she smoked marijuana every day, but stated the last time she used methamphetamine was in November 2016.

During Mother's interview, Father arrived home with food for the family. According to the social worker, Father "appeared upset, and uncomfortable." When the social worker asked Mother and Father if they would be willing to take a drug test, Father said he had to ask permission from his employer and it would be extremely inconvenient. He left before the social worker could interview him and give him drug testing information.

The social worker observed both children were clean and well-groomed. They appeared developmentally on target. R.H. did not exhibit any of the behaviors that Mother ascribed to her.

The maternal grandmother, Jane E., believed the parents were using drugs. She said the paternal grandmother was a known drug user, who started coming to Mother's and Father's home in July 2016 and giving them drugs. Jane reported Mother had hallucinations, and both parents' personalities had changed. According to Jane, Mother would leave home on a daily basis around 10:00 p.m., then return at some later time. Mother was verbally abusive towards the children, especially R.H. Jane thought Mother had a mental health problem when Mother was young, but she was never assessed. Jane was in the process of

evicting the parents from their apartment because they did not pay the rent.

C. *The Petition and Detention*

On June 5, 2017 the Department filed a petition alleging Mother had a history of substance abuse and abused methamphetamine and marijuana, rendering her unable to supervise and care for R.H. and K.H (count b-1). Further, Father knew or should have known of Mother's substance abuse but failed to protect the children (count b-1). The petition also alleged Mother had emotional problems that rendered her unable to supervise and care for the children (count b-2). The petition alleged Mother created a detrimental home environment by verbally abusing the children (count b-3).

At the June 5, 2017 detention hearing, the juvenile court detained the children. R.H. was placed with the maternal grandmother. K.H. was placed with a foster family. The juvenile court ordered the Department to provide Mother and Father with family reunification services. The court granted Mother and Father monitored visits for a minimum of twice a week for two hours each visit.

On July 21, 2017 the Department amended the petition to add count b-4, alleging Father had an unresolved history of substance abuse, including methamphetamine and alcohol, which rendered him incapable of providing care for the children. The amended petition also alleged in count b-4 that Father's drug and/or alcohol use with Mother resulted in the children being neglected, abused, and subjected to Mother's abusive behavior and deteriorating mental health.

D. *The Jurisdiction and Disposition Report and Hearing*

The July 11, 2017 jurisdiction and disposition report stated two-year-old K.H. was placed with a foster parent, Wendy M. Wendy reported K.H. appeared “‘amazingly well adjusted’ especially considering she ha[d] never been separated from her mother.” Wendy said, “She is a very happy child and is very obedient.” K.H. could not use actual words, but could dress and undress herself and appeared very advanced in other areas. She communicated by pointing to things. K.H. attended a preschool and was doing very well. She was not receiving mental health services.⁴

On August 9, 2017 the juvenile court sustained amended counts b-1, b-2, and b-4 of the amended petition, finding Mother’s and Father’s substance abuse was unresolved, and Mother exhibited emotional problems. The juvenile court declared R.H. and K.H. dependents of the court under section 300, subdivision (b)(1). The court removed the children from the parents’ custody. The court ordered Mother to participate in a six-month drug program with aftercare, weekly random or on-demand drug testing, a 12-step program, parenting classes, mental health counseling, and individual counseling to address case issues. The court ordered Father to participate in weekly random or on-demand drug testing, a 12-step program, parenting classes, and individual counseling to address case issues. The court granted Mother and Father monitored visits twice a week for two hours

⁴ Mother only appeals from termination of her parental rights as to K.H. Accordingly, we only summarize the findings in these and later reports as to K.H.

each visit with the Department having discretion to liberalize visitation.

E. *The Six-month Review Report and Hearing*

The January 31, 2018 status review report stated Mother had not enrolled in any court-ordered services. Mother only showed up for one drug test, which was positive for cannabinoids. Father attended some parenting classes and Narcotics Anonymous meetings, but had not completed any of the court-ordered programs. Father only showed up for four drug tests, of which two were positive for cannabinoids. The parents did not consistently visit K.H. and R.H.

K.H. was in good physical health and met all her developmental milestones. She attended a daycare program on weekdays. The report stated, “[K.H.] is not receiving mental health services at this time as [she] does not display any behaviors needed to be addressed in a therapeutic setting. [K.H.] is able to play alone for an extended period of time, showing positive and negative reactions, and usually enjoys being around people.” K.H. was doing well in her placement and bonded with her caregiver, Wendy. The report stated, “[K.H.] is typically happy, although she does occasionally have tantrums during visits with her parents. [K.H.’s] tantrum[s] include jumping in place, crying, and isolating herself in the corner of the room refusing to move or acknowledge anyone.”

Mother and Father were present at the February 7, 2018 six-month review hearing. The juvenile court terminated family reunification services for Mother and Father because they did not comply with their case plans. The court set a section 366.26 hearing for June 6, 2018, identifying adoption as the permanent

plan for the children. The court ordered the Department “to prepare an assessment plan as required by” section 366.21, subdivision (i), and “to initiate an adoptive home study within the next week.”

F. *The Status Review and Section 366.26 Reports*

The May 16, 2018 status review report stated K.H. was “thriving” in her placement with Wendy. The child was “typically happy,” but occasionally had tantrums during visits with her parents. The parents allowed her to sit in a corner until she made an effort to interact with them. The tantrums usually lasted about three minutes. K.H. did not receive mental health services because she did not exhibit any behaviors that needed to be addressed in a therapeutic setting.

K.H.’s paternal cousin, Alexandria L., expressed an interest in adopting her. Alexandria was a licensed foster parent who resided in Colorado. After a social worker explained the differences between legal guardianship and adoption, Alexandria stated she would like to adopt K.H. Because Alexandria lived in Colorado, the adoption would have to go through the Interstate Compact on Placement of Children (Fam. Code, § 7900 et seq.; ICPC) process.

K.H.’s paternal aunt, Hilda R., initially also expressed interest in adopting K.H. But later Hilda and her husband decided K.H. should be placed with Alexandria. Hilda explained Alexandria could better meet K.H.’s needs because she was a stay-at-home mother who did not have other young children at home. Hilda stated, however, if the Department was unable to place K.H. with Alexandria, Hilda would like to be considered for placement or as a permanency option.

The May 21, 2018 section 366.26 report stated K.H. was in good physical health. K.H. was meeting her developmental milestones and was not receiving any mental health services. She was “able to play alone for an extended period of time, showing positive and negative reactions, and usually enjoys being around people.” K.H. was doing well in her placement and had bonded with her caregiver Wendy. K.H. was “an overall happy child,” and Wendy had “no concerns regarding her behavior.”

The health and education passport (health passport) for K.H. was attached to the section 366.26 report. According to the health passport, K.H. had an initial screening for mental health on June 6, 2017. A staff person referred K.H. for mental health services. The health passport indicated K.H. had “[c]ounseling for [k]ids” beginning on June 15, 2017 as part of the initial mental health plan. Separately on July 27, 2017, a service provider screened K.H. and determined no referral was needed for any developmental issues.

Mother and Father did not consistently visit K.H. and R.H. Sometimes Mother and Father did not confirm prior to the monitored visits whether they were coming, or if they did confirm, they would fail to show up. When Mother and Father visited, they were appropriate, bringing gifts and snacks, and occasionally games or activities for the children. K.H. enjoyed the visits with her parents. She looked forward to the visits and expressed sadness when her parents failed to show up.

The Department recommended adoption as the permanent plan for K.H. The Department reported it was waiting for an adoption worker to be assigned to assess Alexandria, who wanted to adopt K.H. The Department stated it could not initiate the adoption process until there was an evaluation under the ICPC

because Alexandria lived in another state. The Department requested that the juvenile court order the Department to initiate an evaluation pursuant to the ICPC.

The February 9, 2018 concurrent planning assessment, attached to the section 366.26 report, indicated in section VI that Alexandria was “undecided” about providing a permanent placement for K.H. However, section VIII stated K.H. was “likely to be adopted” and that Alexandria “would like to adopt [K.H.] as she would like her to be with family not in the foster care system.”

G. *The Section 366.26 Hearing*

Mother and Father were not present at the June 6, 2018 section 366.26 hearing. The Department requested termination of parental rights: “With regard to [K.H.], this is a three year old and it is true [the social workers are] looking at a relative and they need an I.C.P.C. but this is a three year old . . . the Department believes is adoptable and many jurisdictions will not even go forward on an adoptive home study in another state . . .— or I.C.P.C. unless parental rights are terminated. . . . The Department is asking to proceed because if, in fact, . . . this child cannot be placed with this relative, she’s a three year old without any issues, and . . . can be placed in a pre-adoptive home.” The Department added that if the juvenile court terminated parental rights, this would make it easier for K.H. “to be adopted whether it’s by a relative if the I.C.P.C. is approved or to move the child to a pre-adopt[ion] home.”

Father’s counsel objected and requested a contested section 366.26 hearing. She contended she did not have an adoption assessment indicating whether K.H. was adoptable. The court

denied Father's request, noting that Mother and Father were visiting "sporadically," and had not yet been granted unmonitored visits. The juvenile court concluded it was "satisfied that both of these children are adoptable," and stated it was "going to terminate parental rights."⁵ Mother's counsel then stated, "Mother joins Father's counsel in objecting to termination of parental rights." The juvenile court found by clear and convincing evidence K.H. was likely to be adopted, and terminated Mother's and Father's parental rights. The juvenile court also ordered the Department to initiate an investigation of placement of K.H. with Alexandria in Colorado pursuant to the ICPC.⁶

DISCUSSION

A. *Mother Did Not Forfeit Her Challenges to the Juvenile Court's Denial of a Contested Hearing and Finding of Adoptability*

The Department contends Mother forfeited her arguments that the juvenile court violated her right to due process by denying her request for a contested section 366.26 hearing and that substantial evidence did not support the juvenile court's finding K.H. was adoptable. The Department asserts Mother

⁵ The juvenile court made the same findings as to R.H. and terminated Mother's parental rights.

⁶ A December 5, 2018 juvenile court minute order indicates the court received an approved ICPC from the State of Colorado to place K.H. with Alexandria. The juvenile court on that date ordered the Department to place K.H. with Alexandria.

joined in Father's objection to termination of parental rights, but not his request for a contested hearing or challenge to the juvenile court's adoptability finding. We disagree.

"[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, superseded by statute on another ground as stated in *In re Aaron J.* (2018) 22 Cal.App.5th 1038, 1050; accord, *In re Maria Q.* (2018) 28 Cal.App.5th 577, 590 ["A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court."].) Moreover, "[g]eneral objections are insufficient to preserve issues for review. [Citation.] The objection must state the ground or grounds upon which the objection is based." (*In re E.A.* (2012) 209 Cal.App.4th 787, 790; accord, *In re Daniel B.* (2014) 231 Cal.App.4th 663, 672.) Forfeiture is not automatic, "[b]ut the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.*, at p. 1293; accord, *In re C.M.* (2017) 15 Cal.App.5th 376, 385.)

At the section 366.26 hearing, Mother's counsel joined Father's counsel in objecting to termination of parental rights. But the juvenile court terminated parental rights based on its finding K.H. was likely to be adopted. We read Mother's joinder in Father's objection to termination of parental rights to include her objection to the juvenile court's finding of adoptability. As to Mother's failure specifically to object to the juvenile court's failure to grant Father's request for a contested hearing, we exercise our discretion to consider whether Mother was deprived of her due process right to a contested hearing. (*In re D.H.* (2017) 14 Cal.App.5th 719, 728, 737 [father did not forfeit contention his

due process rights were violated by court's termination of parental rights without finding of parental unfitness or detriment to the child]; *In re T.G.* (2013) 215 Cal.App.4th 1, 13-14 [same]; *In re Frank R.* (2011) 192 Cal.App.4th 532, 539 ["we are reluctant to enforce the waiver rule when it conflicts with due process"]; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1210 ["an appellate court *may* review an error despite a party's failure to raise it below if due process rights are involved"].)

B. *The Juvenile Court's Denial of Mother's Request for a Contested Section 366.26 Hearing Did Not Violate Her Right to Due Process*

"A parent has a right to due process at a section 366.26 hearing resulting in the termination of parental rights, which includes a meaningful opportunity to be heard, present evidence, and confront witnesses. However, these procedural rights are subject to evidentiary principles. Due process is 'a flexible concept dependent on the circumstances.'" (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612; accord, *In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1120.) "Since due process does not authorize a parent 'to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest.'" (*In re Grace P.*, at p. 612; accord, *In re Thomas R.* (2006) 145 Cal.App.4th 726, 733 (*Thomas R.*) ["The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court."].)

To the extent Mother raises a question of law, we review her contention she was denied due process de novo. (*In re D.H.*,

supra, 14 Cal.App.5th at p. 728 [reviewing de novo whether juvenile court denied father due process by terminating his parental rights without finding of unfitness or detriment to child]; *In re A.B.* (2014) 230 Cal.App.4th 1420, 1434 [question whether mother had due process right to evidentiary hearing before juvenile court could deny her family reunification services or make exit orders presented question of law reviewed de novo]; *In re T.G.*, *supra*, 215 Cal.App.4th at p. 14 [reviewing de novo father's claim that termination of his parental rights without finding of unfitness or detriment to child denied him due process].) However, we review whether Mother made a sufficient offer of proof to entitle her to a contested hearing for an abuse of discretion. (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 611 [juvenile court abused its discretion in denying father contested hearing on beneficial parent-child relationship exception to termination of parental rights based on father's offer of proof he had consistent positive visits with children]; *In re A.B.*, at p. 1434 [court's determination on whether offer of proof was sufficient to require evidentiary hearing reviewed for abuse of discretion].)

Here, Father only requested a contested section 366.26 hearing based on the asserted lack of an adoption assessment indicating whether K.H. was adoptable. Mother did not make an additional offer of proof. Contrary to Father's assertion, the February 9, 2018 concurrent planning assessment, May 16, 2018 status review report, and May 21, 2018 section 366.26 report all showed K.H. was likely to be adopted. The reports indicated K.H. was a three-year-old who was in good physical health, met her developmental milestones, and had no mental health problems. She was "thriving" in her placement and "typically happy," except for "occasional[]" tantrums lasting about three minutes during

visits with the parents. K.H. was “an overall happy child” and her foster mother reported “no concerns regarding her behavior.”

Mother contends *Thomas R.* supports her claim the juvenile court’s denial of her request for a contested section 366.26 hearing violated her right to due process. Mother’s reliance on *Thomas R.* is misplaced. In *Thomas R.*, the initial adoption assessment indicated “[the] boys were not otherwise adoptable if placement with the foster parents were to fall through.” (*Thomas R.*, *supra*, 145 Cal.App.4th at p. 734.) The court concluded, “The foster parents’ vacillation about adoption versus long-term guardianship suggests the possibility that they were not conclusively committed to adopting this otherwise hard-to-place sibling group, and the supplemental adoption assessment gave no explanation for their change of mind. In these circumstances, we cannot conclude that denying the parents the opportunity to cross-examine the social worker and the prospective adoptive parents was harmless beyond a reasonable doubt.” (*Ibid.*)

The evidence K.H. was “an overall happy child” and “thriving” in her placement, with only occasional brief tantrums, stands in stark contrast to the “hard-to-place sibling group” at issue in *Thomas R.* Further, the record showed paternal cousin Alexandria was interested in adopting K.H., and paternal aunt, Hilda, was willing to provide K.H. with a permanent home if the Department was unable to place the child with Alexandria. In light of the ample evidence of K.H.’s adoptability, and the lack of an offer of proof showing Mother could present evidence to the contrary at a contested hearing, the trial court did not abuse its discretion in denying the request for a contested section 366.26 hearing.

C. *Substantial Evidence Supported the Juvenile Court's Finding K.H. Was Likely To Be Adopted*

If the juvenile court determines at the section 366.26 hearing by clear and convincing evidence the child is likely to be adopted, the juvenile court “shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1); accord, *In re J.W.* (2018) 26 Cal.App.5th 263, 266 [“A juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time.”].) “The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted.” (§ 366.26, subd. (c)(1).)

“The issue of adoptability . . . focuses on the minor, e.g., whether the minor’s age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406; accord, *In re Michael G.* (2012) 203 Cal.App.4th 580, 589 [same].) “If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home.” (*In re Michael G.*, at p. 589; accord, *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.) However, “[w]hen a child is deemed adoptable only because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is a legal impediment to the prospective adoptive parent’s adoption and whether he or she is able to meet the needs of the child.” (*In re J.W.*, *supra*, 26 Cal.App.5th at pp. 267-268; accord, *In re Jose C.* (2010) 188 Cal.App.4th 147, 159.)

“On review, “we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time.”” (*In re J.W.*, *supra*, 26 Cal.App.5th at p. 267; accord, *In re Michael G.*, *supra*, 203 Cal.App.4th at p. 589.) We do not “reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court.” (*In re Michael G.*, at p. 589; accord, *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1167.)

Mother contends the juvenile court’s adoptability finding was not supported by substantial evidence because K.H. had untreated mental health needs. We disagree. Mother relies on an entry in K.H.’s health passport showing that on June 6, 2017 a staff person screened K.H. for mental health and referred her for services. But a later entry on the same page of K.H.’s health passport indicated K.H. started mental health “counseling for kids” on June 15, 2017. As of July 11, 2017 K.H. was no longer receiving mental health services. The January 31, 2018 status review report explained, “[K.H.] is not receiving mental health services at this time as [she] does not display any behaviors needed to be addressed in a therapeutic setting. [K.H.] is able to play alone for an extended period of time, showing positive and negative reactions, and usually enjoys being around people. [K.H.] has not been prescribed any medication.” Contrary to Mother’s contention, K.H.’s mental health needs were successfully addressed by the counseling she received starting in June 2017.

Mother also contends K.H.’s tantrums during visits with her parents made her generally unadoptable. This too lacks

merit. As a three year old, it is not remarkable that K.H. would have occasional tantrums during visits with her parents. K.H. looked forward to her parents' visits and was happy to see them. However, Mother and Father did not visit consistently, and K.H. would be sad when her parents did not show up at the scheduled visits. During the tantrums, K.H. would jump in place, cry, or isolate herself in a corner of the room and refuse to move or acknowledge anyone, but the tantrums lasted only about three minutes. Aside from the occasional tantrums, K.H. was "thriving" and "typically happy," and had no behavioral problems at her daycare or foster home. Accordingly, there was substantial evidence to support the juvenile court's finding K.H. was generally adoptable, and we do not reach whether K.H. was specifically adoptable. (*In re Michael G.*, *supra*, 203 Cal.App.4th at p. 589; *In re Carl R.*, *supra*, 128 Cal.App.4th at p. 1061.)

DISPOSITION

The June 6, 2018 order terminating Mother's parental rights as to K.H. is affirmed. Mother's appeal as to R.H. is dismissed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.